

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Developing a unified Inter-carrier |) | CC Docket No. 01-92 |
| Compensation Regime |) | |

**REPLY COMMENTS OF
THE MISSOURI INDEPENDENT TELEPHONE GROUP**

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November 5, 2001

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1. The Missouri Independent Telephone Group

The MITG is comprised of seven small telephone companies serving rural areas within the state of Missouri.¹ The members of the MITG range in size from a single exchange company serving 380 access lines to an 18 exchange company serving 8,609 access lines. Members of the MITG are rural telephone companies as defined by the Telecommunications Act of 1996 and are “small entities” as defined by the Commission in its NPRM.²

Save one, all MITG members are, and for decades have been, interconnected with RBOC Southwestern Bell Telephone Company (SWBT). In contrast to the MITG members, SWBT serves approximately 2,750,000 Missouri access lines in 160 exchanges.

Some MITG members operate on a cooperative, member-owned basis. Some are private for-profit corporations. They serve areas where historically the large companies could not be incented to provide service.

2. Rural LECs and unified carrier compensation

Due to the low customer density and high cost of service per access line, the MITG members provide local service to their local customers and exchange access services to interexchange carriers. They do not provide toll service in their exchanges. The cost of originating toll calls in the MITG member exchanges only would make their toll rates unreasonably high. Instead the MITG members rely upon national, statewide,

¹ These seven companies are Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, Modern Telecommunications Company, MoKan Dial Inc., and Northeast Missouri Rural Telephone Company.

or regional toll carriers with the ability to average the costs of urban and rural toll service. MITG customers are hoped to have available toll services at reasonable rates in reasonable parity to those available in urban areas.

As a result of not providing toll service, MITG companies have two sources of regulated revenue: exchange access and local service. A typical MITG member may have about 65 to 70 % of its regulated revenues from access services, with local service contributing the remaining 30 to 35%.

It appears to be an implicit assumption of the unified carrier compensation proposals that originating and terminating access intercompany compensation terminate. A rural ILEC relying upon access revenues, with no toll revenues cannot engage in a bill and keep regime without imposing an unacceptable escalation of local service rates upon rural customers. Rural LECs cannot both recover the cost of local service and provide competitively priced toll without drastically increasing local service rates. This is at odds with the fundamentals of universal service, and with the public policy of providing parity of rates and services between urban and rural customers.

Larger ILECs providing toll service have a different financial effect. They have toll revenues in addition to access and local revenues. Eliminating originating and terminating access eliminate both a revenue and an expense item for large ILECs, whereas for MITG members it eliminates only a revenue item, and does not eliminate any expense item. While bill and keep might ostensible be designed to be a workable modification to intercompany compensation for large ILECs and IXC's, it will not be workable for small rural ILECs such as the MITG.

² *In the Matter of Developing a Unified Inter-carrier Compensation Regime*, CC Docket No. 01-92, FCC 01-132 (rel. April 27, 2001), ¶ 141, 144.

2. Reply to ex parte presentations regarding wireless traffic terminating to rural ILECs in Missouri

Several parties have made ex parte presentations in this docket concerning the termination of wireless-originated traffic to rural incumbent LECs in Missouri. These parties include Alltel Communications Inc., AT&T Wireless, and Verizon Wireless. These comments fail to correctly state the situation and underlying history, which the MITG will attempt to correct here.

In short, the wireless carriers contend the MITG companies are obligated to accept reciprocal compensation for traffic that is delivered to them by an IXC, SWBT. In short, the MITG companies contend that this traffic terminated by an IXC, without any direct interconnection between the wireless carrier and the terminating MITG company, is access traffic. It is the MITG position that SWBT as the IXC is obligated to pay terminating access for this traffic.

Missouri History

Between 1990 and 1998 SWBT via Missouri tariff offered to wireless carriers LATA wide termination of wireless traffic to wireless carriers. SWBT refused to pay other ILECs terminating compensation for the termination of the wireless traffic terminating to ILECs other than SWBT. The MoPSC in complaint proceedings directed SWBT to pay terminating access on this traffic.

SWBT then revised its tariff to provide termination only to SWBT exchanges, and

“transiting” to other ILEC exchanges, for which SWBT refused to pay terminating compensation. In approving this tariff, the MoPSC determined that wireless carriers would not send traffic destined for third party ILECs in advance of an approved compensation agreement. The MoPSC subsequently approved interconnection agreements between SWBT and wireless carriers adopting this same determination.

Rural ILECs such as the MITG were refused participation in the negotiation or approval of these agreements, even though by their terms they addressed “transiting” traffic destined for the MITG companies.

The wireless carriers violated the terms of the MoPSC Order approving SWBT’s tariff, and the terms of the interconnection agreements by sending to SWBT traffic destined to terminate with the MITG companies. As a result, between February of 1998 and today, over 3 and ½ years, this traffic has been terminating to the MITG, mostly without any compensation being paid.

Some MITG companies continue to bill terminating access rates, as their access tariffs are the only authorized compensation mechanism in place. Other MITG companies had approved in February of 2001 terminating wireless tariffs authorizing them to bill the wireless carriers. Billings under these tariffs have for the most part been unsuccessful.

The wireless carriers have rebuffed MITG efforts to obtain compensation on several fronts: they have continued to send such traffic knowing that the limitations of the SWBT/rural ILEC Feature Group C access common trunk connection would not allow the MITG companies to block this traffic; they have refused to pay access compensation on the basis of their claim access cannot apply to intraMTA traffic, even

though it is not known what proportions are intraMTA or interMTA traffic, and even though they sent the traffic in violation of MoPSC Orders and Agreements; they have taken the position the MITG companies have consented to “de facto” bill and keep for this traffic; they have refused to negotiate direct interconnection agreements, and have insisted they will only negotiate for an indirect or “transiting” structure; they have taken the position that the MITG companies must pay the wireless carriers for termination of 1+ dialed landline calls originated in MITG exchanges which are terminated to the wireless carriers by the end user’s presubscribed or casually selected IXC.

Each of these rebuffs lack any legitimate basis in law or common sense. Most are premised upon a theory of “indirect” interconnection compensation, sometimes referred to as “transiting”. As ILECs, the MITG companies are not required to accept local compensation for “transited” traffic. The MITG companies are entitled to insist upon access compensation until there is an interconnection agreement constructed upon a direct interconnection superseding the MITG access tariff.

SWBT only interconnects with the wireless carriers for purposes of reciprocal compensation on a direct interconnection basis. SWBT and the wireless carriers state the MITG companies are obliged to accept reciprocal compensation on an indirect “transiting” basis. Yet SWBT itself refuses to accept “transit” traffic from carriers indirectly interconnected with SWBT.

The obligations to interconnect and negotiate reciprocal compensation agreements contained in §§ 251 and 252 of the Telecommunications Act of 1996 apply equally to all ILECs, whether they be RBOC SWBT or a small MITG company. These obligations do

not vary by size of the ILEC. The MITG companies are not relegated to an inferior status by the Act.

In Kansas interconnection agreement proceedings, SWBT refused to accept indirect or “transited” traffic. The basis of SWBT’s refusal was that it could not be required to accept “transit” traffic as it preferred direct interconnections, and that being forced to accept “transit” traffic would allow the transiting carrier to interject itself into the efforts of SWBT to establish direct interconnection agreements with carriers. The Kansas Corporation Commission agreed with SWBT, holding:

“The Arbitrator agrees with SWBT that local exchange carriers have a duty to establish reciprocal compensation arrangements for the transport and termination of traffic. 47 U.S.C. § 251(b)(5). Consistent with that obligation, no other carrier should be authorized to interject itself into the interconnection arrangements of the local exchange carrier, without its agreement. There is no indication in the statute that transit services are considered. Clearly, parties may accept calls on a transiting basis, but SWBT has indicated its unwillingness to do so and has expressed a preference for negotiation its own agreement. SWBT’s last best offer is adopted.”³

The MITG members desire no more or less than SWBT. They desire direct interconnections on separate trunks be ordered whereupon the appropriate business relationships can be established prior to traffic flow, whereupon traffic can be measured, jurisdictionalized, the appropriate compensation rate applied, the terms of billing and collection established, and provisions for disconnection for non-payment made enforceable. Experience has proved to the MITG that allowing SWBT and the wireless carriers to enter into interconnection agreements purporting to transit traffic to the MITG members allows SWBT to interject itself into the interconnection arrangements of the MITG members, without their agreement. If the statute imposes no transiting obligation

upon SWBT, it imposes no such obligation upon the MITG. Although other carriers may elect to accept compensation on an indirect or transiting basis, the MITG companies have just as strong an unwillingness to do so as SWBT does. The MITG companies have expressed a preference for negotiating their own direct interconnection compensation agreements, but have been precluded from doing so because SWBT and the wireless carriers in their agreements address traffic destined for the MITG, thereby precluding MITG agreements.

In Kansas SWBT characterizes the law as not requiring SWBT to accept transit traffic. Yet in Missouri SWBT has repeatedly taken the position it is required to transit traffic to the MITG companies, and the MITG companies are required to accept traffic on a transited basis. This duplicity of positions is not a correct statement of ILEC obligations.

The MITG notes that other RBOCs apparently refuse or have announced their position to refuse to even provide the transiting of traffic to rural ILECs.⁴

The Act does not require an ILEC to involuntarily accept local compensation arrangements constructed upon indirect interconnections. The FCC has repeatedly held that the term “interconnection” refers solely to the physical linking of two networks, and *not* to the exchange of traffic between networks.⁵ The FCC recently explained:

³ See August 7, 2000 Arbitrator’s Order 5: Decision in the Matter of the Petition of TCG Kansas City, Inc. for Compulsory Arbitration of Unresolved Issues with Southwestern Bell Telephone Company Pursuant to section 252 of the Telecommunication Act of 1996, Docket No. 00-TCGT-571-ARB, at pages 25-26.

⁴ The August 21, 2001 Comments of Sprint Corporation in this docket, at pages 33 and 34, footnote 19, indicate that in Maryland Verizon refuses to provide indirect interconnection or transiting.

⁵ See Attachment B *In the Matter of Total Telecommunications Services, Inc. and Atlas Telephone Company, Inc., Complainants, v. AT&T Corporation, Defendant*, File No. E-97-003, FCC 01-84, *Memorandum Opinion and Order*, rel. Mar. 13, 2001, ¶ 23.

In the *Local Competition Order*, we specifically drew a distinction between “interconnection” and “transport and termination,” and concluded that the term “interconnection,” as used in section 251(c)(2), does not include the duty to transport and terminate traffic. Accordingly, section 51.5 of our rules specifically defines “interconnection” as “the linking of two networks for the mutual exchange of traffic,” and states that this term “does not include the transport and termination of traffic.”⁶

Likewise, in *Comptel v. FCC*, 117 F.3d 1068 (8th Cir. 1997), the court held that the term “interconnection” in section 251(c)(2) refers to a physical linking between the requesting carrier and the ILEC.

The Act itself and the implementing FCC rules also make clear that interconnection agreements can only be required of ILECs via a direct physical interconnection between the wireless carrier’s facilities to those of the ILEC. For example, 47 USC 251(c)(2) imposes the duty upon ILECs to provide, for the facilities and equipment if any requesting telecommunications carrier, **interconnection with the local exchange carrier’s network—(B) at any technically feasible point within the carrier’s network.** (emphasis added)

47 USC 251 (c) (1) imposes the duty upon ILECs to negotiate in good faith in accordance with section 252 the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b). The duty to establish **reciprocal compensation** arrangements is contained in subsection (b)(5). This subsection mandates that reciprocal compensation is for the **transport and termination** of telecommunications. (emphasis added)

The FCC’s relevant rule defines the term “transport” as occurring via a direct interconnection between two carriers:

⁶ *Id.*

Transport. For purposes of this subpart, transport is the transmission and any necessary tandem switching of local telecommunications traffic subject to section 252(b)(5) of the Act ***from the interconnection point between the two carriers*** to the terminating carrier's end office switch that directly serves the called party, or equivalent facility provided by a carrier other than the incumbent LEC.

47 C.F.R. §51.701(c)(emphasis added)

Under the FCC's definition, "transport" takes place between ***two carriers*** and begins at "***the interconnection point between the two carriers.***" However, under the indirect interconnection, or "transiting" structure postulated by SWBT and the wireless carriers, more than two carriers are involved, and the first and third carriers have no point of interconnection between them from which the "transport" can be measured. Therefore, there is no "transport" under the FCC's definition presently taking place between MITG companies and the wireless carriers.

The wireless carriers fail to consider the definition of "transport" and thus erroneously conclude that access rates cannot apply to traffic originated by a wireless carrier, transited by IXC SWBT and terminated by a third LEC. Because these calls do not fit the FCC's definition of "transport and termination," they cannot fit under the reciprocal compensation clause. Therefore, access rates must apply.

As with the definition of "transport," the FCC's definition of "local telecommunications traffic" addresses only the context of a direct interconnection between two carriers. The FCC defines "local telecommunications traffic" as:

- (1) Telecommunications traffic between **a** LEC and **a** telecommunications carrier other than a CMRS provider that originates and terminates within a local service area established by the state commission; or

- (2) Telecommunications traffic between a LEC and CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area, as defined in § 24.202(a) of this chapter.

See 47 CFR 51.701(b).

The FCC defines the wireless carrier's local calling scope as calls between a single LEC and a CMRS provider within the MTA. However, this definition does not address calls between a CMRS provider and interexchange carriers ("IXCs") such as AT&T Long Distance, MCI/WorldCom, or SWBT for that matter⁷ nor does it define calls between a CMRS provider and multiple LECs or calls from a CMRS provider that are "transited" through a LEC or some other carrier to another LEC. Although the FCC defined intraMTA calling as local, the FCC also made clear that it was not upsetting the existing access regime for interexchange traffic.⁸

The FCC's *First Report and Order*⁹ indicates that interconnection agreements were to be between two directly interconnecting carriers, who are competing local providers. The following enumerated paragraphs of that decision demonstrate that

⁷ In MITG exchanges the only role of SWBT is as an IXC. SWBT does not there operate as a LEC.

⁸ See e.g. *In the Matter of Implementation of Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 96-325, *First Report and Order*, rel. Aug. 1, 1996, ¶30 ("Nothing in this *Report and Order* alters the collection of access charges paid by an interexchange carrier under Part 69 of the Commission's rules, when the incumbent LEC provides exchange access service to an interexchange carrier, either directly or through service resale.")

⁹ *In the Matter of Implementation of Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 96-325, *First Report and Order*, rel. Aug. 1, 1996.

reciprocal compensation is intended only when two carriers collaborate to complete a call and access charges are intended when three carriers collaborate to complete a call:

¶ 1033. We conclude, however, as a legal matter, that transport and termination of local traffic are different services than access service for long distance telecommunications.

¶ 1034. Access charges were developed to address a situation in which three carriers—typically, the originating LEC, the IXC, and the terminating LEC—collaborate to complete a long-distance call.... By contrast, reciprocal compensation for transport and termination of calls is intended for a situation in which *two carriers* collaborate to complete a local call.... We find that the reciprocal compensation provisions of section 251(b)(5) for transport and termination of traffic do not apply to the transport or termination of interstate or intrastate interexchange traffic.

¶ 1039. We conclude that transport and termination should be treated as two distinct functions. We define “transport”, for purposes of section 251(b)(5), as the transmission of terminating traffic that is subject to section 251(b)(5) from the interconnection point between *the two carriers* to the terminating carrier’s end office switch that directly serves the called party...

¶ 1040. We define “termination,” for purposes of section 251(b)(5), as the switching of traffic that is subject to section 251(b)(5) at the terminating carriers’ end office switch (or equivalent facility) and delivery of that traffic from that switch to the called party’s premises... we conclude in the interconnection section above that *interconnecting carriers* may interconnect at any technically feasible point. We find that this sufficiently limits LECs’ ability to disadvantage *interconnecting parties* through their network design decisions.

¶ 1042... Section 251(b)(5) specifies that LECs and *interconnecting carriers* shall compensate one another for termination of traffic on a reciprocal basis.

¶ 1043... Under our existing practice, most traffic between LECs and CMRS providers is not subject to interstate access charges, *unless it is carried by an IXC*.... we conclude that the new transport and termination rules should be applied to LECs and CMRS providers so that CMRS providers continue not to pay interstate access charges for traffic that currently is not subject to such charges, and are assessed such charges for traffic that is currently subject to interstate access charges.

¶ 1044...As an alternative, LECs and CMRS providers can use the *point of interconnection between the two carriers at the beginning of the call* to determine the location of the mobile caller or called party.

(emphasis added and internal citations omitted)

This language from the FCC's *First Report and Order* indicates that reciprocal compensation is intended only for collaborations between two carriers and not three. Where, as here, SWBT in its IXC capacity in MITG service areas carries the traffic, access applies.

This distinction was recognized again by FCC in its *Notice of Proposed Rulemaking Regarding the Development of a Unified Intercarrier Compensation Regime*. Chairman Powell, in his concurring opinion, stated:

Since I arrived at the Commission, I have been known to talk about the public switched telephone network as the hub of a wheel, the spokes being the many companies (*e.g.*, paging companies, wireless carriers, ISPs, long-distance carriers) that interconnect with and pass traffic to and from the wireline telephone network. **As all regulators and businesses know, however, the rates for interconnecting with the phone network vary depending on the type of company that is doing the interconnecting.** In a competitive environment, this leads to arbitrage and inefficient entry incentives, as companies try to interconnect at the most attractive rates. I support this *Notice* because it seeks comment on how we can make these varied intercarrier compensation regimes more consistent with each other and, thus, with competition.¹⁰

¹⁰ *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Notice of Proposed Rulemaking*, FCC 01-132, 2001 LEXIS FCC 2339, rel. April 27, 2001

Commissioner Powell's statement recognizes that the routing of the call impacts the intercompany compensation that applies.

Other recent FCC decisions support this view as well. In 2000, the FCC decided a complaint case involving several paging carriers and local exchange carriers (LECs). In that case, the FCC observed:

Pursuant to Section 51.703(b), a LEC may not charge CMRS providers for facilities used to deliver LEC-originated traffic that originates and terminates within the same MTA, as this constitutes local traffic under our rules. **Such traffic falls under our reciprocal compensation rules if carried by the incumbent LEC, and under our access charge rules if carried by an interexchange carrier.**¹¹

This language could not be any clearer: where SWBT in its IXC capacity is involved in carrying an intraMTA wireless call, access charges can and do apply.

The contention of the wireless carriers that the MITG companies have entered into "de facto" bill and keep compensation arrangements is false. No such arrangements have been approved by the Missouri Service Commission pursuant to 47 USC 252.

Finally, the wireless carriers contend that the MITG companies are responsible to pay the wireless carriers terminating compensation on 1+ traffic originating from MITG company exchanges. As set forth above, the FCC has recognized that it is the IXC's responsibility to pay both originating and

terminating access on these calls. Proceedings in Missouri, and comments filed previously in this NPRM, indicate that the wireless carriers are getting paid terminating compensation for this traffic from the IXCs today. Obtaining additional terminating compensation from the MITG companies would provide the wireless carriers with double recovery.

The MITG appreciates the Commission's consideration of this response to the ex parte presentations of the wireless carriers made in this docket.

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¹¹ *TSR Wireless, LLC, et al. v. US West Communications, Inc., et al.*, File Nos. E-98-13 et al., *Memorandum Opinion and Order*, FCC 00-194 (2000 FCC LEXIS 3219) rel. June 21, 2000, p. 19, para. 31 (emphasis added)(footnotes omitted)